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LAN (1956) Department.

MS SERIES.

G.O. NO. 324

Dated 4-8-1956

[Despatch Abstract.]

Legislation — The Jaffna Succession Act. 1928 (N. A. III of 1929) Amendments to section 41 etc: - Proposals of the members of the Jaffna Community of South Jaffna District Examined papers Recorded

B. VAIKUNTA BALIGA, B.A.B.L., M.L.A.
VAKIL.

PHONE 215
LORETTO VILLA,
KODIALBAIL,
MANGALORE-3, (S. K)

Date 2nd July, 1956

To Secy, Law

The Hon'ble Sri Manickavelu Naicker,
Minister for Revenue,
Fort St. George, MADRAS.

Dear

In continuation of the conversation I had with you over the Trunk, I am herein sending copy of the Act. Kindly peruse it and have it examined by the department. The M.L.As. will support it in as much as it is the unanimous wish of Jains. It would be but proper that it should be respected.

With kind regards,

Yours sincerely,
B. Vaikunta Baliga

To Secy to Law

M.A. Memorandum 4.7.56

Memorandum submitted to

Hon'ble Sri. C. Subramaniam, B.A.,B.L., M.L.A.,

Minister for Finance,Law & Education,

Government of Madras,

Camp: Mangalore.

by

the members of the Jain Community of South Kanara.

Memorandum submitted to

Hon'ble Sri. C. Subramaniam, B.A.,B.L., M.L.A.,
Minister for Finance,Law & Education,
Government of Madras,
Camp: Mangalore.

by

the members of the Jain Community of South Kanara

Honourable Sir,

The Jains are a small community in the District of South Kanara. They are only 9174 in strength as per the last census. On behalf of this small community we desire to make this representation to you.

2. The Jains all over India are governed by the Mitakshara Law of inheritance. But in South Kanara out of the 9174 Jains about 75% are governed by the customary Aliyasanthana Law of Inheritance. And even among the Jains who are governed by the Aliyasanthana system of inheritance, all their self acquisitions devolve on their heirs as per the order of succession provided in the Hindu Mitakshara system of inheritance, as a result of the Jain Succession Act 1928 enacted by the Madras Legislature.

3. Realising the necessity of amending the Law of Succession relating to Jains, the Madras Government enacted the Jaina Succession Act 1928.

4. Thus, this very small community is governed by two separate systems of inheritance, and the same person is also governed by two different systems of inheritance regarding the property he inherits and he acquires.

5. The general opinion among the members of the Jain Community of the District is that this anomaly

should be put an end to, and that the entire Jain Community of South Kanara should be governed by a common law of inheritance in common with the other Hindus and Jains all over India. At a Conference of Jains held in Mangalore at the Mahavira Jain Boarding House on 1-2-1956 it was unanimously resolved that all the Jains of South Kanara should be governed by the Mitakshara system of inheritance and that the Government should be addressed to effect necessary changes in the Madras Jaina Succession Act 1928. The Jains of South Kanara do not desire to be governed by the Madras Aliyasanthana Act regarding inheritance to their family properties.

6. The Statement of the Objects and Reasons for the passing of the Madras Jaina Succession Act 1928 given as a prefatory note to the said Act and which is given as an annexure hereto, argues the case of the Jains of South Kanara to be governed by the Mitakshara school of inheritance.

7. In pursuance of the various resolutions passed at the above Conference of Jains, we have prepared a Draft Bill for amending Madras Jaina Succession Act. The Draft Bill is submitted herewith.

8. We request you to please examine the Draft Bill and to introduce necessary legislation to amend the law of succession governing the Jains of South Kanara very soon on the lines suggested in the said Draft Bill.

9. It will not be out of place if we point out that when Sri. H. V. Pataskar, Minister for Legal Affairs, of the Union Government visited Mangalore on

14-4-1956, Memorandums were presented to him on behalf of the Jain Community expressing the desire of the Community to be governed by the Mitakshara system of inheritance.

10. We hope that you will help this small community to have a uniform system of inheritance with the rest of the Hindus and Jains of India, without which the Jains of South Kanara suffer untold difficulties and hardship.

We remain,

Yours in service,

Mangalore,)
20-4-'56)

JAINA SUCCESSION (AMENDMENT) ACT 1956

Whereas it is expedient further to amend the Jaina Succession Act, 1928, for the purposes hereinafter appearing; It is hereby enacted as follows:-

I. This Act may be called the Jaina Succession (Amendment) Act, 1956.

II. Substitute the following as section 4:-

4. In this Act unless there is anything repugnant on the subject or context

"Kutumba" means a female and all her children, and all her descendants in the female line.

"Kavaru" means and includes the male issue of a female member of a Kutumba or a female descendant with all her descendants.

3. After section 4 of the Jaina Succession Act 1928. (hereinafter referred to as the said Act) the following section shall be inserted, namely:-

5. Every person whether male or female governed by this Act, being a member of an Aliya-santhana Kutumba shall be entitled to claim a partition of his or her share in all the Kutumba properties.

6. Any person entitled to claim a partition under Section 5 shall be allotted a share dividing the properties per stirpes, tracing the descent through the femal

ILLUSTRATION:

In a Kutumba consisting of A and her two male children B and C, A's 2 female children D and E, D's son F, E's children G H and J, A, B and C would be each entitled to a 1/5th share, D and F together would be entitled to a 1/5th share and E, and G H and J are together entitled to a 1/5th share. If F were to file a suit claiming a partition, he would be entitled to 1/2 of 1/5th. If J were to claim a partition, her share would be 1/4 of 1/5th.

7. The share allotted to a person or Kavaru under a partition under this Act or the share to which any person or Kavaru would be entitled to under this Act on a division in status, shall hereafter devolve on that persons' heirs as per rules of inheritance followed by the Mitakshara School in Madras, or shall be inherited by all the members of the said Kavaru on a stirpital basis.

8. Any person or Kavaru who has been allotted a share or who is by reason of a division in status created is entitled to claim partition of a share under the Madras Aliyasanthana Act, in the Kutumba properties shall take their respective shares absolutely whether they are "Santhathi Kavarus" as defined in the Madras Aliyasanthana Act or not, notwithstanding any law, or custom to the contrary.

9. All properties owned by any person or Kavaru governed by this Act, whether acquired by him or the Kavaru, or obtained at a partition under the Madras Aliyasanthana Act, shall descend hereafter on his own or her own heirs among all the members of a Kavaru on a stirpital basis.

10. The Madras Aliyasanthana Act in so far as it relates to the Jainas of South Kanara shall stand repealed.

III. Section 6 of the said Act may be renumbered

The District of South Kanara has a population of 17.49 lakhs. Out of this, 9174 are Jains. The Jains all over India follow the Mitakshara system of inheritance. But in South Kanara 25% of the Jains are governed by the Mitakshara system of inheritance, and about 75% by the Aliyasanthana system of inheritance. And even this 75% of the Jains are governed by the Mitakshara system of inheritance in regard to their self aquisitions and inheritance from their parents.

2. As 25% of the Jains were governed by the Mitakshara system of inheritance, with a view to ultimately introduce the Mitakshara inheritance to govern the inheritance of all the Jains of the District the Jaina Succession Act of 1928 was enacted by the Madras legislature, applying the Mitakshara system of inheritance to the acquisitions of all Jains.

3. The Jains in this District are a small community. They observe pollution and perform all ceremonies like the Jains and Hindus in the other parts of India governed by the Mitakshara school of inheritance. The Aliyasanthana system of inheritance has stood in the way of the progress of this community and the improvement of the lands. The Jains in this District find it difficult to arrange marriage alliances with the Jains outside this district owing to the divergence in the system of inheritance followed by Jains in this District and by those outside. As a result, the census figures show that Jain population is on the decline and the female population is lower than the male population.

4. As it is, in this small community about 25% of the population are governed by the Mitakshara system of inheritance and about 75% are governed by the Aliyasanthana system of inheritance. Even among those Jains governed by the Aliyasanthana law, all their self acquisitions and inheritances from their parents or relations are governed by the Mitakshara system of inheritance by reason of the Jaina Succession Act.

5. The Madras Aliyasanthana Act has been very discriminately against the males. Though in Mitakshara division of the properties on a stirpital basis, in the Madras Aliyasanthana Act division is on a half per capita and half per stirpital basis. This has reduced considerably the share which a male could get. Further these share which a male inherits is only to ensure for his life time.

6. The Jains of this District feel that the share to which a male is entitled and which he has obtained under the Madras Aliyasanthana Act should be taken by him absolutely, and that a male whether his mother is alive or dead, should be deemed to be a Kavaru entitled to claim a share under the Madras Aliyasanthana Act to begin with the share so obtained by him should thereafter be governed by the Hindu Succession Act to be passed by the Parliament. The opinion among Jains is practically unanimous; except for the small percentage of vested interests.

THE JAINA SUCCESSION ACT, 1928 (III OF 1929)

Prefatory Note. - The following extracts from the Statement of Objects and Reasons would show the necessity for the passing of this Act:-

The Jains in South Kanara district are about 9,000 in number and are rich land owners. In matters of faith and religious practices they conform to the Jains in other parts of India. They belong to the Digambara Sect. Their shrines situated in Karkal, Venur, Mudabidri and other places are worshipped by all classes of Jains in India and are visited by pilgrims in large numbers annually. In matters of social usages, they conform to those prevailing among the higher classes of Hindus governed by the Mitakshara Law of Inheritance. The thread investment ceremony, the pouring of water at the time of the 'Dhara' or marriage ceremony by the parents, the rules of pollution on the occasion of birth and death are observed as in Makkalasanthana system. The Jain temples are officiated by Jain priests called 'Indars' and they preside at the marriage and other ceremonies. They intermarry with Jains in other parts of India.

Yet, by a strange irony of fate, while they have everything in common with the Jains in other parts of India who are governed by the rules of Hindu Law and who observe the Makkalasanthana system of inheritance to their property, the Jains in South Kanara are governed by the Aliyasanthana system of inheritance by which the line of descent to property is traced to females and whereby the property devolves on sisters and nephews rather than on sons and daughters, as found among Bunts, Billawars and other communities. Even here the practice is not uniform. The 'Indars' or the priestly class are followers of the Makkalasanthana Law and some of the chief families as "Ajlar" and the Dharmastal Heggade also follow it. It is futile to ascertain how these incongruities arose and no sufficient materials are available to make researches into it. But the disabilities arising from the application of the Aliyasanthana system of inheritance to Jains who have very little in common with the other classes governed by the Aliyasanthana Law are keenly felt, the more so when marriage among them is a recognised institution but is not recognized by law as conferring the right of inheritance from father to son. The Malabar Marriage Act, 1896 though it included all Hindus governed by Aliyasanthana Law, has failed to give any relief to the Jains, since the registration of marriages which is made compulsory under the Act before the marriage is legally recognised, is strongly resented by the Jains and is opposed to the social custom which recognizes it and governs all their relations. Even among Marumakkatayam and other followers of the Malabar Marriage Act, the Act is more or less a dead letter as very few marriages have been registered though the Act was passed more than several decades ago. The present measure, therefore, takes for granted the institution of marriage as it exists and accepts it as being sufficient to confer rights of inheritance. The attempt is to bring into a line with the right of inheritance enjoyed by Jains in other parts of India who follow the Mitakshara Law of Inheritance under the Hindu Law. It is not attempted to revolutionize the whole system of Aliyasanthana inheritance and the tarwad or family rights are not in any way touched upon and are kept intact, since it will affect the vested rights. The Bill affects only the self-acquired or the tarwad properties of the last surviving owner who could effectively dispose of it by will or testament.

It may be relevant to point out that the Legislature has interfered to give redress in similar instances. In the case of Mapillas of South Kanara who have a recognized system of marriage under Mahomedan Law, but among whom the Marumakkatayam or Aliyasanthana system of marriage prevailed, the Legislature by Act I of 1918 gave the necessary relief by confining its operation to self-acquired properties and made the properties descendable to children instead of tarwad members i.e., to sisters and sisters' children. The present bill atempts no more than what has been done under Act I of 1918 and is practically framed on the same lines by giving legal sanction to the marriage prevalent and recognizing the issue of such marriages entitling them to inherit the property.

The matter was brought to the notice of Government by a memorial, dated 29th May, 1918, through the Collector of the district and the Government, after obtaining the opinions of the High Court Judges, the Advocate-General and the District Judge of South Kanara who all favourably viewed it gave permission by G.O. No.944(Home-Judicial), dated 29th April,1919, to introduce a Bill in the local Legislative Council by a non-official member. Leave to introduce was given to this very Bill by the last Council to Mr. Dharmastal Heggade, a Jain himself, but for lack of time it lapsed. There are only five sections; sections 1 and 4 require no comment and section 5 has been sufficiently dealt with (Statement of Objects and Reasons, Fort St. George Gazette, Part IV, p 87, 20th September 1927.)

THE JAINA SUCCESSION ACT, 1928 (III OF 1929).

(5th March, 1929

An Act to amend and define the Law of Intestate Succession among Jainas governed by the Aliyasanthana Law of Inheritance.

Preamble

WHEREAS it is expedient to amend and define the law relating to intestate succession among Jainas governed by the Aliyasanthana Law of Inheritance and whereas the previous sanction of the Governor-General has been obtained under section 80-A of the Government of India Act; it is enacted as follows:-

Short title.

1. This Act may be called The Jaina Succession Act, 1928.

Local extent.

2. It extends to the whole of the Presidency of Madras.

Jainas to whom the Act is applicable.

3. It applies to Jainas domiciled in the Presidency of Madras who are governed by the Aliyasantana Law of Inheritance and also, in respect of immovable property situated within the presidency of Madras, to Jainas domiciled outside the said Presidency who are so governed.

Definition of intestate property.

4. A person is deemed to die intestate in respect of all property, of which he has not made a testamentary disposition which is capable of taking effect.

Explanation.-Property in this section does not include tarwad (kutumba) property, unless the person dying intestate was exclusively entitled to it.

Application of Mitakshara Law of Inheritance to Jainas.

5. Such property shall, notwithstanding any law or custom to the contrary, devolve upon his heirs in the order and according to the rules of the Mitakshara Law of Inheritance under the Hindu Law as administered in the Presidency of Madras. Such property, on devolution, shall be subject to all the incidents of the Mitakshara Law of Inheritance as administered in the Presidency of Madras.

Validation of customary marriages among Jainas.

6. Notwithstanding any law to the contrary, all forms of marriages among such Jainas recognized by custom as valid shall be legal and valid for the purposes of this Act.

N(Law)
The request made in this letter may please be complied with. Ministry 12/7

S. N. Samrajya,
Member Senate, Madras.

P. O. Shirthady, S. K.

Date 7th July 1956.

To

Hon. Sri A.B. Shetty,
Minister, Govt Of Madras, Madras

Dear Sir,

As per your orul instructions I wish to draw your kind attention towards the inclusion of the prposed amendment to the Jaina succession Act in the list items for the next session of Assembly If our presence is needed we shall come Madras immediately. We fully hope that you would render all possible help in this direction.

Copies of the amendment have been handed over to Hon. Sri Subramanyam and to Hon. Sri Manickvelu.

Hope to be excused for these troubles.

With regards,

Yours faithfully

Law. Shirthadyage is this Bill? Kindly peruse 14.7.56.

7/7/56

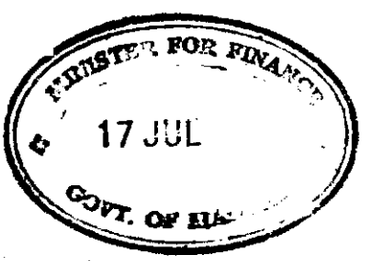
SECRETARY TO GOVERNMENT
14 JUL 1956
LAW DEPT. MADRAS.

14.7

M (F & E)

Ambedkar
12/7/56

Law



MEMORANDUM SUBMITTED TO

HON'BLE SRI C. SUBRAMANIAM, B.A., B.L., M. L.A.,

MINISTER FOR FINANCE, LAW & EDUCATION,

GOVERNMENT OF MADRAS,

CAMP: MANGALORE.

BY

THE MEMBERS OF THE JAIN COMMUNITY OF SOUTH KANARA.

--:o:--

Law Dept

MEMORANDUM SUBMITTED TO

HON'BLE SRI C. SUBRAMANIAM, B.A., B.L., M.L.A.,

MINISTER FOR FINANCE, LAW & EDUCATION,

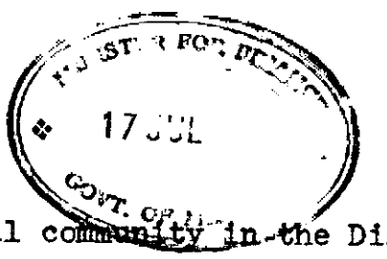
GOVERNMENT OF MADRAS,

CAMP: MANGALORE

BY

THE MEMBERS OF THE JAIN COMMUNITY OF SOUTH KANARA.

--:o:--



Honourable Sir,

The Jains are a small community in the Distri of South Kanara. They are only 9174 in strength as per the last Census. On behalf of this small community we desire to make this representation to you.

2. The Jains all over India are governed by the Mitakshara Law of inheritance. But in South Kanara out of the 9174 Jains about 75% are governed by the customary Aliyasanthana Law of Inheritance. And even among the Jains who are governed by the Aliyasanthana system of inheritance, all their self-acquisitions devolve on their heirs as per the order of succession provided in the Hindu Mitakshara system of inheritance, as a result of the Jain Succession Act 1928 enacted by the Madras Legislature.

3. Realising the necessity of amending the Law of Succession relating to Jains, the Madras Government enacted the Jaina Succession Act 1928.

4. Thus, this very small community is governed by two separate systems of inheritance, and the same person is also governed by two different systems of inheritance regarding the property he inherits and he acquires.

5. The general opinion among the members of the Jain Community of the District is that this anomaly

should be put an end to, and that the entire Jain Community of South Kanara should be governed by a common law of inheritance in common with the other Hindus and Jains all over India. At a Conference of Jains held in Mangalore at the Mahavira Jain Boarding House on 1.2.1956 it was unanimously resolved that all the Jains of South Kanara should be governed by the Mitakshara system of inheritance and that the Government should be addressed to effect necessary changes in the Madras Jaina Succession Act 1928. The Jains of South Kanara do not desire to be governed by the Madras Aliyasanthana Act regarding inheritance to their family properties.

6. The Statement of the Objects and Reasons for the passing of the Madras Jaina Succession Act 1928 given as a prefatory note to the said Act and which is given as an annexure hereto, argues the case of the Jains of South Kanara to be governed by the Mitakshara School of inheritance.

7. In pursuance of the various resolutions passed at the above Conference of Jains, we have prepared a Draft Bill for amending Madras Jaina Succession Act. The Draft Bill is submitted herewith.

8. We request you to please examine the Draft Bill and to introduce necessary legislation to amend the law of succession governing the Jains of South Kanara very soon an the lines suggested in the said Draft Bill.

9. It will not be out of place if we point out that when Sri H. V. Pataskar, Minister for Legal Affairs, of the Union Government visited Mangalore, on 14.4.1956, Memorandums were presented to him on behalf of the Jain

Community expressing the desire of the Community to be governed by the Mitakshara system of inheritance.

10. We hope that you will help this small community to have a uniform system of inheritance with the rest of the Hindus and Jains of India, without which the Jains of South Kanara suffer untold difficulties and hardship.

We remain,

Yours in service,

Mangalore,
20.4.1956.

JAINA SUCCESSION (AMENDMENT) ACT 1956.

WHEREAS it is expedient further to amend the Jaina Succession Act, 1928, for the purposes hereinafter appearing; It is hereby enacted as follows:-

I. This Act may be called the JAINA SUCCESSION (AMENDMENT) ACT, 1956.

II. Substitute the following as Section 4:-

4. In this Act unless there is anything repugnant on the subject or context:

"Kutumba" means a female and all her children, and all her descendants in the female line.

"Kavaru" means and includes the male issue of a female member of a Kutumba or a female descendant with all her descendants.

3. After section 4 of the Jaina Succession Act 1928 (hereinafter referred to as the said Act) the following Section shall be inserted, namely:-

5. Every person whether male or female governed by this Act,being a member of an Aliyasanthana Kutumba shall be entitled to claim a partition of his or her share in all the Kutumba properties.

6. Any person entitled to claim a partition under Section 5 shall be allotted a share dividing the properties as per stirpes, tracing the descent through the female.

ILLUSTRATION.

In a Kutumba consisting of A and hef two male

children B and C, A's 2 female children D and E, D's son, F, E's children G, H and J, A, B and C would be each entitled to a 1/5th share, D and F together would be entitled to a 1/5th share and E, and G, H and J are together entitled to a 1/5th share. If F were to file a suit claiming a partition, he would be entitled to 1/2 of 1/5th. If J were to claim a partition, her share would be 1/4 of 1/5th.

7. The share allotted to a person or Kavaru under a partition under this Act or the share to which any person or Kavaru would be entitled to under this Act on a division in status, shall hereafter devolve on that person's heirs as per rules of inheritance followed by the Mitakshara School in Madras, or shall be inherited by all the members of the said Kavaru on a stirpital basis.

8. Any person or Kavaru who has been allotted a share or who is by reason of a division in status created is entitled to claim partition of a share under the Madras Aliyasanthana Act, in the Kutumba properties shall take their respective shares absolutely whether they are "Santhathi kavarus" as defined in the Madras Aliyasanthana Act or not, notwithstanding any law, or custom to the contrary.

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10. The Madras Aliyasanthana Act in so far as it

relates to the Jainas of South Kanara shall stand repealed.

III. Section 6 of the said Act may be renumbered as Section 11.

IV. Sections 4 and 5 of the said Act may be deleted.

--:o:--

The District of South Kanara has a population of 17.49 lakhs. Out of this, 9174 are Jains. The Jains all over India follow the Mitakshara system of inheritance. But in South Kanara 25% of the Jains are governed by the Mitakshara system of inheritance, and about 75% by the Aliyasanthana system of inheritance. And even this 75% of the Jains are governed by the Mitakshara system of inheritance in regard to their self-acquisitions and inheritance from their parents.

2. As 25% of the Jains were governed by the Mitakshara system of inheritance, with a view to ultimately introduce the Mitakshara inheritance to govern the inheritance of all the Jains of the District the Jaina Succession Act of 1928 was enacted by the Madras Legislature, applying the Mitakshara system of inheritance to the acquisitions of all Jains.

3. The Jains in this District are a small community They observe pollution and perform all ceremonies like the Jains and Hindus in the other parts of India governed by the Mitakshara School of inheritance. The Aliyasanthana system of inheritance has stood in the way of the progress of this community and the improvement of the lands. The Jains in this District find it difficult to arrange marriage alliances with the Jains outside this district owing to the divergence in the system of inheritance followed by Jains in this District and by those outside. As a result, the census figures show that Jain population is on the decline and the female population is lower than the male population.

4. As it is, in this small community about 25% of the population are governed by the Mitakshara system of inheritance and about 75% are governed by the Aliyasanthana

system of inheritance. Even among those Jains governed by the Aliyasanthana law, all their self-acquisitions and inheritances from their parents or relations are governed by the Mitakshara system of inheritance by reason of the Jaina Succession Act.

5. The Madras Aliyasanthana Act has been very discriminately against the males. Though in Mitakshara division of the properties on a stirpital basis, in the Madras Aliyasanthana Act division is on a half per capita and half per stirpital basis. This has reduced considerably the share which a male could get. Further the share which a male inherits is only to ensure for his life time.

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PREFATORY NOTE.- The following extracts from the Statement of Objects and Reasons would show the necessity for the passing of this Act:-

The Jains in South Kanara district are about 9,000 in number and are rich land owners. In matters of faith and religious practices they conform to the Jains in other parts of India. They belong to the Digambara Sect. Their shrines situated in Karkal, Venur, Mudabidri and other places are worshipped by all classes of Jains in India and are visited by pilgrims in large numbers annually. In matters of social usages, they conform to those prevailing among the higher classes of Hindus governed by the Mitakshara Law of Inheritance. The thread investment ceremony, the pouring of water at the time of the 'Dhara' or marriage ceremony by the parents, the rules of pollution on the occasion of birth and death are observed as in the Makkalasanthana system. The Jain temples are officiated by Jain priests called 'Indars' and they preside at the marriage and other ceremonies. They intermarry with Jains in other parts of India.

Yet, by a strange irony of fate, while they have everything in common with the Jains in other parts of India who are governed by the rules of Hindu Law and who observe the Makkalasanthana system of inheritance to their property, the Jains in South Kanara are governed by the Aliyasanthana system of inheritance by which the line of descent to property is traced to females and whereby the property devolves on sisters and nephews rather than on sons and daughters, as found among Bunts, Billavars and other communities. Even here the practice is not uniform. The 'Indars' or the priestly class are followers of the Makkalasanthana Law and some of the chief families as "Ajlar" and

the Dharmastal Heggade also follow it. It is futile to ascertain how these incongruities arose and no sufficient materials are available to make researches into it. But the disabilities arising from the application of the Aliyasanthana system of inheritance to Jains who have very little in common with the other classes governed by the Aliyasanthana Law are keenly felt, the more so when marriage among them is a recognised institution but is not recognised by law as conferring the right of inheritance from father to son. The Malabar Marriage Act, 1896 though it included all Hindus governed by Aliyasanthana Law, has failed to give any relief to the Jains, since the registration of marriages which is made compulsory under the Act before the marriage is legally recognised, is strongly resented by the Jains and is opposed to the social custom which recognises it and governs all their relations. Even among Marumakkathayam and other followers of the Malabar Marriage Act, the Act is more or less a dead letter as very few marriages have been registered though the Act was passed more than several decades ago. The present measure, therefore, takes for granted the institution of marriage as it exists and accepts it as being sufficient to confer rights of inheritance. The attempt is to bring into a line with the right of inheritance enjoyed by Jains in other parts of India who follow the Mitakshara Law of Inheritance under the Hindu Law. It is not attempted to revolutionise the whole system of Aliyasanthana inheritance and the tarwad or family rights are not in any way touched upon and are kept intact, since it will affect the vested rights. The Bill affects only the self-acquired or the tarwad properties of the last surviving owner who could effectively dispose of it by Will or testament.

It may be relevant to point out that the Legislature has interfered to give redress in similar instances. In the case of Mapillas of South Kanara who have a recognised system of marriage under Mahommadan Law, but among whom the Marumakkathayam or Aliyasanthana system of marriage prevailed, the Legislature by Act I of 1918 gave the necessary relief by confining its operation to self-acquired properties and made the properties descendable to children instead of tarwad members, i.e., to sisters and sisters' children. The present bill attempts no more than what has been done under Act I of 1918 and is practically framed on the same lines by giving legal sanction to the marriage prevalent and recognising the issue of such marriages entitling them to inherit the property.

The matter was brought to the notice of Government by a memorial, dated 29th May, 1918, through the Collector of the district and the Government, after obtaining the opinions of the High Court Judges, the Advocate-General and the District Judge of South Kanara who all favourably viewed it gave permission by G.O. No.944 (Home-Judicial), dated 29th April, 1919, to introduce a Bill in the local Legislative Council by a non-official member. Leave to introduce was given to this very Bill by the last Council to Mr. Dharmasthal Heggade, a Jain himself, but for lack of time it lapsed. There are only five sections; sections 1 and 4 require no comment and section 5 has been sufficiently dealt with (Statement of Objects and Reasons, Fort St. George Gazette, Part IV, p.87, 20th September 1927.)

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THE JAINA SUCCESSION ACT, 1928 (III of 1929).

(5th March, 1929)

An Act to amend and define the Law of Intestate Succession among Jainas governed by the Aliyasanthana Law of Inheritance.

PREAMBLE.

WHEREAS it is expedient, to amend and define the law relating to intestate succession among Jainas governed by the Aliyasanthana Law of Inheritance and Whereas the previous sanction of the Governor-General has been obtained under Section 80-A of the Government of India Act; it is enacted as follows:-

SHORT TITLE.

1. This Act may be called THE JAINA SUCCESSION ACT, 1928.

LOCAL EXTENT.

2. It extends to the whole of the Presidency of Madras.

JAINAS TO WHOM THE ACT IS APPLICABLE.

3. It applies to Jainas domiciled in the Presidency of Madras who are governed by the Aliyasanthana Law of Inheritance and also, in respect of immovable property situated within the Presidency of Madras, to Jainas domiciled outside the said Presidency who are so governed.

DEFINITION OF INTESTATE PROPERTY.

4. A person is deemed to die intestate in respect of all property, of which he has not made a testamentary disposition which is capable of taking effect.

EXPLANATION:- Property in this section does not include tarwad (kutumba) property, unless the person dying intestate was exclusively entitled to it.

5. Such property shall, notwithstanding any law or custom to the contrary, devolve upon his heirs in the order and according to the rules of Mitakshara Law of Inheritance under the Hindu Law as administered in the Presidency of Madras. Such property, on devolution, shall be subject to all the incidents of the Mitakshara Law of Inheritance as administered in the Presidency of Madras.

APPLICATION OF MITAKSHARA LAW OF INHERITANCE TO JAINAS.

6. Notwithstanding any law to the contrary, all forms of marriages among such Jainas recognized by custom as valid shall be legal and valid for the purposes of this Act.

VALIDATION OF CUSTOMARY MARRIAGES AMONG JAINAS.

--:o:--

(2/3/56)

Law Dept

Letter No. 10497/56-I Dated 2.8.56

To

Sri B. Vankunta Baliga, B.A; B.L;
Vakil, Lorelle Villa,
Kodibail, Mangalore-3

Sri S.D. Samrajya
Nambiar, Senate, Radha
P.O. Shirtady
South Kanara D

Sir,

Sub Legislation - The Jaina Succession Act 1929 - Amendments to.

Ref: your letter dated 2.7.1956 addressed to M(R). M(H)

With reference to your letter cited I am directed to inform you that in view of the impending State Reorganisation and in view of the paucity of time at their disposal Government consider that there is no adequate time left at the disposal of this Govt. to elicit public opinion in regard to the proposed legislation. The Govt. do not therefore find it possible under the present circumstances to undertake legislation as requested.

Yours faithfully,
S. F.

PAS
2/8/56.

SRC
2/8

PARTMENT.

Please see the memorandum by the Jain community of South Kanara to M(F & E) and the letters of Sri.Baliga and Samrajiya dt.2-7-56 and 7-7-56 respectively and the note of the Ministers thereon.

In the memorandum, the Jain community set out their wish to be governed by the Mitakshara system of inheritance and suggest amending the Madras Jaina Succession Act (III of 1929 The memorandum also contains a draft Bill suggesting amendments to the above Act.

The Jains in India ~~should~~ are, generally governed by the Mitakshara system of inheritance. But in South Kanara about 75 percent of the Jains are governed by the Alia-Santhana system of inheritance. The Act ___ of 1929 has the effect of applying the Mitakshara system of inheritance to the self-acquired property of those Jains Thus the Jains in South Kanara are governed by two separate systems of inheritance. Further, different systems are applicable to the same instance depending on whether the property is Kutumba property or self-acquired. It is stated that the majority of the South Kanara Jains ~~did~~ do not desire to be governed by the Alia-Santhana law regarding inheritance and that they want to be governed uniformly by a law in common with the Jains in other parts of India. The draft Bill in the memorandum purports, by way of amending Act III of 1929, to provide for the right of a member of a Kutumba to claim partition of the Kutumba property and for devolution according to the Mitakshara system of inheritance, with the variation that the descent is to be traced through the female.

The Madras Act III of 1929 was passed with the object of applying the Mitakshara system of inherita

to only the self-acquired or the Tarwayd properties of the last surviving owner who could effectively dispose of it, by will/or testament. It did not in any way affect the Tarwayd or family rights and properties. The explanation to sec.4 of that Act excludes Tarwayd or Kutumba property from the meaning of the word 'property'. Sec.5 provides that the property so defined shall devolve according to the Mitakshara system of inheritance. Presumably because of these provisions, the Madras Alia Santhana Act (IX of 1949) exempted Jains from the application of the provisions relating to ~~inter-state~~ intestate succession in the later Act. Obviously, there is no question of providing for succession of the Kutumba property since the Kutumba always continues to exist.

The Hindu Succession Act (Central Act XXX of 1956) applies to all Jains and has an overriding effect over other laws and customs. Sec.7(2) of this Act provides that when a Hindu to whom the Alia Santhana law would have applied, if this Act had not been passed, dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a Kutumba or Kavaru, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the Alia Santhana law. It follows that hereafter there is to be no distinction between the Kutumba property and the self-acquired property. It also follows that Madras Act III of 1949 has become futile. Further, there is no necessity for any amendment or enactment providing for devolution of the property according to the Mitakshara system of inheritance, as proposed in sec.7 and 9 of the draft in the memorandum.

Such being the case, the only matter in the memorandu

left for consideration is with reference to the right of a member of a Kutumba to claim individual partition. Under Madras Act IX of 1949, no individual member of a Kutumba is entitled to demand partition. Only Kavaru represented by a majority of members may claim to take its share of the Kutumba properties and separate from the Kutumba. Even then, such claim is subject to certain conditions. The ascertainment of the shares at partition claimed by a kavaru is governed by sec.36 of Act IX of 1949 which is quite different from the Mitakshara law of inheritance. The memorialists appear to desire that the right of partition obtaining in Mitakshara system shall be made available to the Jain community in South Kanara with some variations. It may be noted that apart from this, they do not proposed any change in the incidents of Alia Santhana law. The object of the memorialists will be achieved by mere efflux of time. In view of sec.7(2) of C.A. XXX of 1956, it is only a question of 30 or 40 years before the entire Jain community would be governed by the Mitakshara system of inheritance. Thus, when analysed the request of the memorialists comes to only providing for the right of a member of a Kutumba to claim partition as under the Mitakshara law of inheritance. It is for consideration, whether the Govt. are to undertake, at such short notice, the elaborate process of legislation for such a purpose only which, any way will be outmoded after some ye__ It may also be remembered that any such legislation will necessarily have to divest the already vested rights. After all, in a few months, the Jain community for which a new legislation is sought, will be passing under the Mysore Govt., in view of the Reorganisation of States. The request for changing the law has been made only recently. The community have got

along under the existing system so long that there appears to be no urgency to take all the trouble of pushing through a legislation at such short notice. In this connection, attention is invited to the Madras Marmakkattayam (Amemdment) Bill, 1954 given notice of by a private member. The object of this Bill is analogus to the request of the memorialist. The Select Committee has submitted its report The Bill was not introduced in the last session of the Assembly It is not known whether it will go before the Legislature in the coming Session. Under these circumstances, it seems that the Govt. need not take any steps regarding the memorandum and that the memorialists may be left to move the successor Govt. after reorganisation, if so advised.

If the requests of the memorialists is to be implemented immediately, it is for consideration, whether it would not be better to bring out a new enactment for the purpose, instead of amending the Act III of 1949 which, as pointed out elsewhere, has become a dead letter for all practical purposes. Even amendment of Madras Act IX of 1949 may not be a simple one. A new chapter regarding Jains in South Kanara has to be introduced and certain consequential amendments have to be made in that Act.

For orders. The file may be returned to M (R) and M (H&E) with reference to my minute in the C.F

Srinivasan
7.7.54

The effect of the Hindu Succession Act seems to be that while in the case of a Mitakshara coparcenary the ~~property~~ interest of a coparcener would devolve by survivorship upon the surviving members of the coparcenary and not in accordance with that Act, in the case of an Aliyasantana family on the death of any member his undivided interest in the property of the kutumba or kavaru would pass by intestate or testamentary succession, as the case may be, under the Hindu Succession Act. In other words, as each member of an Aliyasantana coparcenary dies, his share in the joint family property would descend according to the provisions of the Hindu Succession Act. In course of time all the Aliyasantana joint families will cease to exist and there ~~can~~ would be no question of any joint family in that system of law. But in the case of the Mitakshara family there is, theoretically speaking, the possibility of joint families continuing, because the right of survivorship is still allowed to exist. The Jains of South Kanara are now governed in respect of ~~the~~ separate property by the Mitakshara system, But in respect of their joint family property by the Aliyasanta law. What the memorialists want is not a complete change ~~to~~ over to the Mitakshara system of law. That would be highly unfair and impractical and lead to ~~a lot of~~ unsettling of settled things. They simply want that any member of an Aliyasantana joint family should have a right to demand a partition. They do not propose that the right to partition should be dependent upon Mitakshara principles of law. If, as desired by the memorialis any member of an Aliyasanta family is given the

right to demand a partition, the result would be that his share in the property which he so obtains by partition would pass by intestate or testamentary succession, as the case may be, according to the Hindu Succession Act. What the Hindu Succession Act does is also to achieve the same purpose, but to postpone it to a later date. In fact as section 7(2) stands, it is open to any member of an Aliyasantana family to dispose of by testament his share in the joint family property. Only it does not confer on him a right to immediate partition and possession of his share. The only effect of granting the request of the memorialists would seem to be that any member of an Aliyasanta family could demand and get his share of the joint family property divided and then dispose it of as he pleases. That right he does not have now. I do not think that it is necessary to undertake any legislation at such short notice merely for this limited purpose. We should not be stampeded into such ... As regards testamentary and intestate succession, as stated above, they are adequately dealt with by the Hindu Succession Act. As pointed out in the note of the Under Secretary above, there is already a similar legislation under consideration in respect of Marumakkattayam families and it is doubtful whether our Legislature will find ~~the~~ time enough to consider even that legislation. There would have to be sufficient publicity given to this proposal and all the members of the community consulted if the present proposal is to be acted upon. It is highly doubtful whether, even if this request is to be ~~considered~~ conceded, it would be practically feasible to push through the legislation before the partition of the State. I ~~think~~ suggest that the memorialists may be informed that the

Government do not find it possible under the present circumstances to undertake legislation as requested.

A Nagamuswamy
18.7.56

Let me see what
M (H) says
M (R)
M. A. Muthusundaram
18/7
M (F&E)

The suggested legislation M (H)
may be taken up. Accordingly
18/7

Recirculated to M (F&E) and M (R)

A Nagamuswamy
20.7.56

Very well
M. A. Muthusundaram M (R)
24/7 M (F&E)

I am afraid it is too late now, to take up this measure It is just now the Parliament has considered the entire question of succession to property under Hindu Law and passed the Hindu Succession Act It will not be advisable now to make any further changes in the law Further the legislature will have no time to consider the Bill and in any event public opinion will have to be elicited before we make

8

Such a law M(H) may kindly see again

A Lakshmanaswamy
24.7.56

Returned to M(H)

A Alagiriswamy
24.7.56

public opinion may be elicited - [illegible]
4/7

M(H)

It is submitted that usually the public opinion with reference to a particular measure is ascertained by publishing the draft bill. It therefore happens that the Government decide upon a new measure and then ascertain the public reaction to it by publishing it after obtaining the orders of the Governor. In the case of a private bill, it is usually published after leave for introducing is obtained. In this case, no decision to bring in a legislation has yet been taken. There is no draft bill as such in existence. No private member has given notice of a bill on the proposed lines. Hence, just at present, there is no material for publication to elicit public opinion.

If the Government decide to proceed with the legislation, the bill has to be drafted and finalised. (As pointed out earlier, the draft sent by the memorialists is not of any use.) Since the subject falls in the concurrent list, the consent of the Government of India has to be obtained. After such consent, it has to be published and ther notice of motion has to be given. It is for consideration whether all these stages can be passed through

prior to the coming session of the legislature. If it cannot be brought for consideration in the coming session there appears no purpose in taking any effort in this direction since by October or November, the Jains of South Kanara will be in the proposed Karnataka State. The object of the memorialists does not appear to be within the reach by means of a private bill either Kind attention is drawn to the various stages so far undergone by the Madras Marumakkattayam (Amendment Bill, 1954 This Bill has been given notice of by a private member. It has been introduced, published and referred to the Select Committee. The Select Committee has submitted its report. Even so, it is doubted whether it will be passed in the coming session. If this be the position with reference to Marumakkattayam Bill, it appears to be almost an impossibility to enact the proposed legislation in the coming session through motion by a private member. Thus, either way the object of the memorialists is beyond accomplishment. It is submitted that it will be purposeless to seek to obtain public opinion on a measure which cannot be legislated upon within time.

If there can be no draft bill for publication, the only other way is to publish by way of a Press Note, the Government's intention to bring in legislation on the proposed lines and await the public reaction to it. Even here, the same difficulties will arise. For, some time after the Press Note a tentative bill has to be drafted and the other stages gone through before it can come before the Legislature.

For orders.

Srinivasa
26.7.57

For want of the impending State

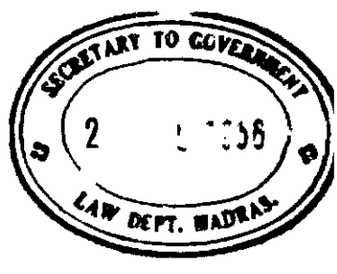
D.S
5

10/
reorganisation, no useful purpose ...
served by eliciting public opinion ...
Govt. Sri Venkata Baliga M... A ...
informed accordingly. May be ...
D M (F&E) and ... (H)

Public opinion can be
Consulted only on some definite legislative
measure. A Bill has to be prepared and published
for eliciting public opinion. Then after introduction
in the Legislature it ~~was~~ will have to be referred to
a Select Committee which, as in the case of the
Marumakkathayam Bill, will take ... etc.
All this cannot be done before 1st October the
next Session after legislature begins on 8th August
and will be over in two weeks. There would be only
no Session thereafter till after the new States
Come into existence. It is submitted it is
physically impossible to do anything by 8th August.
Of course it is possible to prepare a Bill and have
it passed in the Legislature and to take the chance
in respect of the President's assent ... &c ...
Such a course is simply unthinkable in a serious
matter of this kind on which public opinion should
be given ample opportunities to express itself.

A Rajamannar
27 ...

Sivaswamy ... M (F&E)
27 7 ..
... M (H)



Please see the orders in circulation

I have concerned the letter. The letter with suitable alterations may also be sent to Sri G.D. Somaiya

GS

may be done
GS

on pp 10 ante.

With reference to A on pp 9-10 ante and B on pp 6-7 ante a draft letter to Sri. B. Vaikunta Baliga is submitted for approval. After issue of the letter, the papers may be recorded as a G.O for facility of future reference with the abstract given in the margin.

Abstract.

G.O.Ms No. 324 dated 4.8.56 Legislation - The Jain Succession Act, 1928 (M.A III of 1929) - Amendments to section 4 etc: Proposals of the members of the Jain Communities of South Kanara to Examined - Papers recorded.

MS 2/8/56
SAR 2/8

G
2.8.56

2.8.56
DS
S